IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 33 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME-TAX

Versus

HAZARAT PIR-SHAH-E-ALAM ROZA TRUST

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Appearance:

1. INCOME TAX REFERENCE No. 33 of 1989
MR BB NAIK for Petitioner No. 1
MR MI PATEL for Respondent No. 1

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CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 11/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this Reference at the instance of the revenue, the following questions are referred for our opinion in respect of assessment years 1978-79 and 1981-82:-

(i) "Whether, the Appellate Tribunal is right in law and on facts in confirming the order made by the C.I.T. (Appeals) directing the I.T.O. to reframe the assessment keeping in view the directions given by the Appellate Tribunal in orders dated 17.4.85 in I.T.A. Nos.2196 to 2203/Ahd/1976-77?"

(ii) "Whether, the Appellate Tribunal is right in law and on facts in allowing the claim of the assessee relating to complex of building and lands at Rasulabad and lands at Vasana, Isanpur and Sarsa?"

(iii) "Whether, the Appellate Tribunal is right in law and on facts in holding that the income of the Roza was exigible to exemption u/s.11 of the I.T. Act?"

(iv) "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in allowing the claim of the assessee relating to expenditure on the maintenance of the Sajjadanasin and his family?"

2. We have heard Mr BB Naik, learned Standing Counsel for the applicant- revenue. Though served, none appears for the respondent- assessee.

3. In the statement of case, the Tribunal has noted that the Tribunal had already drawn up an elaborate statement of case in respect of assessment years 1964-65 to 1969-70, 1972-73 and 1973-74 in Reference Application Nos.402 to 409 of 1985 which was numbered as ITR No.135 of 1988.

4. At the hearing of this reference, our attention is invited to the decision dated 11-4-2002 of this Court in ITR No.135 of 1988 in case of the same assessee, which decision is also reported in (2002) 175 CTR (Guj) 66. The aforesaid decision was in case of the same assessee, relating to assessment years 1964-65 to 1969-70, 1972-73 and 1973-74.

5. Having perused the aforesaid decision of this Court in the case of this very assessee, we find that this Court answered identical questions for the aforesaid

relevant assessment years in favour of the assessee and against the revenue.

Accordingly, our answer to each of the four questions set out hereinabove is in the affirmative i.e. in favour of the assessee and against the revenue.

6. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)

zgs/-